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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/866,138	05/25/2001	Charles M. Schmeichel	A20-012-01-US	4445

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EXAMINER

PEDDER, DENNIS H

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 11/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/866,138

Applicant(s)
Schmeichel

Examiner
Dennis H. Pedder

Art Unit
3612



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Oct 28, 2002
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18, 30, and 32-38 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18, 30, and 32-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Reissue Applications

1. Applicant is reminded of the continuing obligation under 37 CFR 1.178(b), to timely apprise the Office of any prior or concurrent proceeding in which Patent No. 5,906,407 is or was involved. These proceedings would include interferences, reissues, reexaminations, and litigation.

Applicant is further reminded of the continuing obligation under 37 CFR 1.56, to timely apprise the Office of any information which is material to patentability of the claims under consideration in this reissue application.

These obligations rest with each individual associated with the filing and prosecution of this application for reissue. See also MPEP §§ 1404, 1442.01 and 1442.04.

2. The reissue oath/declaration filed with this application is defective because it fails to identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414. Applicant's original statement is merely a general allegation as is that of the declaration of October 28, 2002.

3. Claims 1-18, 30, 32-38 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

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AMENDMENTS

4. Applicant is reminded of the provisions of Rule 173 regarding amendments in a reissue application.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2-3, 7-10, 14-15, 30, 33-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over either the prior art as admitted by applicant or Wheatley, US 5,934,735, in view of Buratovich.

Applicant admits that tensioning of the front rail of a tonneau cover, which has typically been constructed of canvas or vinyl coated canvas, is problematic in the prior art because tensioning variation induced adjustment is awkward and difficult. Wheatley teaches a step adjustment of such a rail via slots 54,56, leaving only selected incremental tension adjustment.

The art of canvas securement to a supporting frame has clear prior teachings of how to compensate for tension adjustment in the material as evidenced by the patent to Buratovich, using side rail attachment brackets, secured or securing portions, or securing block 33, tensioning rail

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engagement blocks, adjustable portions, or members 22, and a threaded screw member, adjustment screw, adjustable connection mechanism, or threaded screw 38 for applying force to either the tensioning rail member or adjustable portions 22 hence to the tensioning rail itself in Buratovich. Reference to Buratovich is deemed to be relevant to the problem of applicant under the second tier test of In Re Wood, 202 USPO 171 (CCPA 1971) and are hence charged to applicant and in the public domain. As a result, no patent can be issued for these features alone. It would have been obvious to one of ordinary skill in the art to provide in either the prior art as admitted by applicant or Wheatley a easily adjustable rail mechanism as taught by Buratovich in order to eliminate the problems admitted by applicant in the prior art or to improve on the tension adjustment of Wheatley by providing continuous adjustment of the tension in the cover.

As to claim 2, Buratovich shows space between sections 34,35 with aligned holes.

As to claim 3, see screw 38.

As to claim 31, the tension screw 38 of side rail bracket 33, for example, applies a force to tension rail bracket 22.

7. Claims 4, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as admitted by applicant or Wheatley, in view of Buratovich as applied to claims 3 and 10 above, and further in view of Lamb, cited by applicant.

Buratovich has the adjusting screw head 40 outside the blocks leaving same vulnerable to inadvertent contact. It would have been obvious to one of ordinary skill in the art to provide in

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the references above a hidden adjustment knob 34 as taught by Lamb in order to protect same from contact.

Allowable Subject Matter

8. Claims 5-6, 12-13, 16-17 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 251 set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

9. Claim 32 would be allowable if the rejection under 35 U.S.C. 251 is overcome.

10. The following is a statement of reasons for the indication of allowable subject matter: The references of record do not detail, for claims 5 and 12, a graduated scale for adjustment. The references of record, for claims 16-17, do not detail a tensioning rail attachment chamber. The references of record do not detail, for claim 32, the "tensioning rail attachment members" that "sliding secure the elongate tensioning rail to the respective side rails in combination with the force applying threaded screw members.

Response to Arguments

11. Applicant's arguments filed October 28, 2002 have been fully considered but they are not persuasive.

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In amending the claims to delete the means plus function clauses, the applicant has broadened the meaning of the claimed terms to encompass that taught by the above references.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Pedder whose telephone number is (703)308-2178. Fax amendments to expedite handling should be sent to (703) 305-7687.

DHP

November 5, 2002

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A handwritten signature in cursive script, reading "Dennis H. Pedder".

Dennis H. Pedder
Primary Examiner
Art Unit 3612

11/5/02